

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIAM L HARRIS,

Plaintiff,

v.

CITY OF KENT,

Defendants.

Case No. C20-1045 TLF

ORDER GRANTING LEAVE TO  
AMEND

This matter comes before the Court on plaintiff's motion for leave to amend the complaint. Dkt. 25. Defendants have filed a response opposing plaintiff's motion (Dkt. 27) and plaintiff has filed a reply in support of the motion (Dkt. 28). For the reasons set forth below, the Court GRANTS plaintiff's motion for leave to amend and accepts plaintiff's amended complaint (Dkt. 30).

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed his pro se complaint on June 25, 2020 alleging a cause of action under 42 U.S.C. § 1983. Dkt. 1. On July 27, 2020 plaintiff filed a motion for summary judgment. Dkt. 12. Defendants have filed a cross-motion for summary judgment. Dkt. 14.

The Court's current pretrial scheduling order allows the parties until November 6, 2020 to amend their pleadings. Dkt. 29.

1 Plaintiff filed a motion for leave to amend the complaint but did not include a  
2 proposed amended complaint as required by Local Civil Rule 15. Dkt. 25. Defendants  
3 opposed plaintiff's motion for leave to amend arguing that the Court should deny leave  
4 to amend the complaint for failure to follow the Local Rules and because plaintiff's  
5 amended complaint would be futile or subject to dismissal. Dkt. 27. Plaintiff filed a reply  
6 in support of the motion. Dkt. 28.

7 Plaintiff has now filed an amended complaint, within the Court's deadline of  
8 November 6, 2020. Dkt. 30. Defendants have moved to strike the amended complaint  
9 because plaintiff filed the complaint without the Court's leave to file the amended  
10 complaint and because the amended complaint is subject to dismissal. Dkt. 32.

## 11 II. DISCUSSION

12 Pursuant to Federal Rule of Civil Procedure 15(a), after an initial period for  
13 amendment as of right, pleadings may be amended only with the opposing party's  
14 written consent or by leave of the court. Leave to amend should be freely given when  
15 justice so requires. Fed.R.Civ.P. 15(a)(2); *Desertrain v. City of Los Angeles*, 754 F.3d  
16 1147, 1154 (9th Cir. 2014) ("[T]his policy is to be applied with extreme liberality.")

17 The Court must consider five factors when determining the propriety for leave to  
18 amend: bad faith, undue delay, prejudice to the opposing party, futility of amendment,  
19 and whether the plaintiff has previously amended the complaint. *Desertrain*, 754 F.3d at  
20 1154; *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004). Additionally, for each of  
21 these factors, the party opposing amendment has the burden of showing that  
22 amendment is not warranted. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th  
23 Cir. 1987); *see also Richardson v. United States*, 841 F.2d 993, 999 (9th Cir. 1988).

Further, plaintiff is a *pro se* litigant. “Presumably unskilled in the law, the *pro se* litigant is far more prone to making errors in pleading than the person who benefits from the representation of counsel.” *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987). A *pro se* plaintiff’s pleading is ultimately held “to a less stringent standard than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Accordingly, the Court construes plaintiff’s amended complaint (Dkt. 30) as the proposed amended complaint required by Local Rule 15.

Accordingly, pursuant to Fed. R. Civ. P. 15(a), the Court ORDERS:

- 1) Plaintiff's motion for leave to amend (Dkt. 25) is GRANTED;
- 2) Plaintiff's amended complaint (Dkt. 30) shall now be plaintiff's operative complaint;
- 3) Defendants' motion to strike (Dkt. 32) is DENIED;

1 4) The Clerk is directed to strike the pending motions for summary judgment  
2 (Dkt. 12, 14) as moot, in light of the Court's Order to Show Cause, and the  
3 filing of the amended complaint.

4 Dated this 2nd day of November, 2020.

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8 Theresa L. Fricke  
9 United States Magistrate Judge  
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